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11 Attorneys for Plaintiffs, BROOKFIELD PROPERTY  
12 GROUP, LLC – US and STARR  
13 SPECIALTY LINES INSURANCE AGENCY LLC  
14 (ACTING ON BEHALF OF LLOYD’S  
15 SYNDICATE CVS 1919)

16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 BROOKFIELD PROPERTY  
19 GROUP, LLC – US; STARR  
20 SPECIALTY LINES INSURANCE  
21 AGENCY LLC (ACTING ON  
22 BEHALF OF LLOYD’S  
23 SYNDICATE CVS 1919),

24 Plaintiffs,

25 vs.

26 LIBERTY MUTUAL FIRE  
27 INSURANCE COMPANY,

28 Defendant.

Case No.

**COMPLAINT FOR DAMAGES  
FOR:**

1. **BREACH OF CONTRACT**
2. **EXPRESS  
INDEMNIFICATION**
3. **DECLARATORY RELIEF –  
EQUITABLE  
CONTRIBUTION**
4. **DECLARATORY RELIEF**

29 NOW COME Plaintiffs, BROOKFIELD PROPERTY GROUP, LLC  
30 (“Brookfield”), and STARR SPECIALTY LINES INSURANCE AGENCY LLC  
31 (ACTING ON BEHALF OF LLOYD’S SYNDICATE CVS 1919) (“Starr”), by and  
32 through their undersigned counsel and for their Complaint for Damages against  
33 Defendant, LIBERTY MUTUAL FIRE INSURANCE COMPANY (“Liberty  
34 Mutual”), allege upon information and belief as follows:

**THE PARTIES**

1  
2 1. At all relevant times, Brookfield was a limited liability company duly  
3 organized under the laws of the State of Delaware, with its principal place of  
4 business in the State of New York and is authorized to do business in California.  
5 Brookfield is an owner of the property known as 110 East 9th Street, Los Angeles,  
6 California (“Property”).

7 2. Starr is an insurance company organized and existing under the laws of  
8 the State of Texas and has its principal place of business in the State of New York.  
9 Starr is authorized to transact business including the issuance of insurance policies  
10 in the State of California. At all times relevant, Starr provided property insurance  
11 to Brookfield pursuant to Policy of Insurance No. WC 4416.

12 3. Liberty Mutual is a company organized and existing under the laws of  
13 the State of Wisconsin and has its principal place of business in the State of  
14 Massachusetts. Liberty Mutual is authorized to transact business and to issue and  
15 service commercial general liability insurance policies in the State of California. At  
16 all times relevant, Liberty Mutual provided general liability insurance to TURNER  
17 CONSTRUCTION (“Turner”) under a presently unknown policy number. The  
18 Liberty Mutual claim number relative to this matter is P 220-188590-01.

**JURISDICTION AND VENUE**

19  
20 4. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332,  
21 subd. (a). Complete diversity exists between the parties, and the amount in  
22 controversy exceeds the sum of \$75,000, exclusive of interest and costs.

23 5. Defendant is subject to personal jurisdiction in this Court because they  
24 transact business in the State of California and/or have entered into one or more  
25 contracts of insurance with Plaintiff to be performed in the State of California  
26 subject to the jurisdiction of a Court of competent jurisdiction within the United  
27 States.  
28

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391, subd. (b)(2) because a substantial part of the events or omissions giving rise to the claims for relief alleged herein occurred within this District.

7. The contracts of insurance at issue in this action (also referred to herein as insurance policies and insurance products) apply to business operations, real and personal property, insured risks, and related contingent perils within the State of California, and therefore, the disputed contractual language is governed by California law pursuant to Section 1646 of the California Civil Code; and the claims-handling disputes are governed by the common law of California, including the implied covenant of good faith and fair dealing; relevant provisions of the California Insurance Code including Section 791.01 et seq.; and the Fair Claims Settlement Practices Regulations set forth in Title 10 of the California Code of Regulations. 10 CCR §§ 2695.1-2695.14.

#### **PRELIMINARY AND GENERAL ALLEGATIONS**

8. In 2018, Turner entered into a Construction Management Agreement (“CMA”) with Brookfield entity Calmart Sub I, LLC, for the construction and renovation of the existing buildings for the Calmart Property Redevelopment project located at the Property (“Project”). Under the terms of the CMA, Brookfield was identified as the “Owner”; Turner was to act as the Project’s “Construction Manager.” A true and correct copy of the CMA is attached as Exhibit “A” and is incorporated herein by reference as though set forth in full.

9. Pursuant to the CMA, Exhibit J, Turner was required to procure a Commercial General Liability insurance policy, subject to the following terms and conditions:

\* \* \*

**(d) Construction Manager’s insurance will be primary and non-contributory with respect to Owner’s insurance or self-insurance programs.**

1 \* \* \*

2 (f) **Construction Manager's insurance policies will include the**  
3 **obligation to defend and include** the Additional Insureds listed  
4 on the Cover Page (which include but may not be limited to  
5 **Owner, Owner's property manager, Owner's landlords, co-**  
6 **tenants and subtenants, Owner's lender and their directors,**  
7 **officers, representatives, agents, and employees)** as additional  
8 **insureds on a primary and noncontributory basis** for Work  
9 performed under or incidental to this Agreement. **If an**  
10 **Additional Insured has other insurance applicable to the loss,**  
11 **it will be on an excess or contingent basis.** Neither  
12 Construction Manager's obligation to provide insurance nor the  
13 scope of such insurance coverage shall be reduced by the  
14 existence of such other insurance.

15 \* \* \*

16 (h) Construction Manager shall carry the following insurance  
17 policies in the following amounts and with the following terms  
18 and conditions:

19 Commercial General Liability: The Construction Manager will  
20 maintain Commercial General Liability insurance covering all  
21 operations by or on behalf of the Construction Manager on an  
22 occurrence basis against claims for bodily injury, **property**  
23 **damage** (including the loss of use thereof), personal injury and  
24 advertising injury. Such insurance will have the minimum limits,  
25 terms and conditions specified below, and **shall be primary and**  
26 **noncontributory to any other valid and collectible insurance**  
27 **maintained by the Construction Manager, the Owner** and all  
28 other Indemnitees; such limits may be provided in the form of a

1 primary policy or combination of primary and umbrella/excess  
2 policies, each meeting the conditions specified herein for such  
3 policies. (Emphasis added)

4 10. The CMA also specifically stated in Exhibit J that “Brookfield  
5 Properties Management (CA) Inc., and their respective affiliates, shareholders,  
6 members (including members of members), partners (including partners of  
7 partners), subsidiaries, and related entities, and each of their respective successors  
8 and assigns...” be named as Additional Insureds under the Commercial General  
9 Liability insurance policy obtained by Turner.

10 11. On or about December 28, 2020, a significant rainstorm occurred at the  
11 Project site, which deposited approximately two (2) inches of rain over a three (3)  
12 day period.

13 12. Rainwater flowed into the building at several points, including the roof  
14 above the utility elevators, open doors, and ramps that connected two buildings on  
15 several different floors.

16 13. Turner attempted to block the water’s flow and impact through the use  
17 of ground-based barriers and tarps placed over electrical equipment. However, these  
18 mitigation attempts failed to prevent the flow of water into the building and its  
19 impact upon electrical cabinets and elevators.

20 14. Due to the water intrusion, Brookfield incurred damages in an amount  
21 of approximately \$800,000.

### 22 **FIRST CAUSE OF ACTION**

#### 23 **(For Breach of Contract by Brookfield and Starr against Liberty Mutual)**

24 15. Plaintiffs hereby reallege and incorporate by reference all preceding  
25 allegations in Paragraphs 1 through 14 of the Complaint as though fully set forth  
26 herein.

27 16. At all relevant times, Liberty Mutual provided general liability  
28 insurance to Turner, under which Brookfield is an additional insured.

1           17. Every policy of insurance includes an implied covenant of good faith  
2 and fair dealing, which provides that neither party will do anything which will  
3 injure the rights of the other to receive the benefits under the policy.

4           18. On March 1, 2021, Liberty Mutual Senior Claims Specialist Nicole  
5 Doherty issued a coverage denial to Brookfield for the underlying matter, attached  
6 as Exhibit “B” and incorporated herein by reference as though set forth in full.

7           19. Ms. Doherty’s coverage position letter identified Liberty Mutual Claim  
8 Number P 220-188590-01 for the loss at the Property.

9           20. Ms. Doherty’s coverage position letter stated, in pertinent part, “It is  
10 Liberty’s position that the [Brookfield] All Risk policy is primary...” while  
11 providing no legal basis for such a position.

12           21. On October 21, 2021, in response to a request for reconsideration of  
13 Liberty Mutual’s unsupported position, Ms. Doherty, again with no legal basis  
14 whatsoever, reiterated her denial of coverage to Turner and Brookfield stating via e-  
15 mail:

16                   ...it is still [Liberty Mutual’s] position that Brookfield has  
17 obtained All Risk Property coverage for the project in question.  
18 As such, I reiterate Liberty’s position that the All Risk policy is  
19 primary and should be placed on notice of this loss as Liberty’s  
20 policy carriers [sic] a “Your Work” exclusion and thus the All  
21 Risk policy would provide coverage to any damages excluded  
22 under Turner’s general liability policy. Coverage would only be  
23 triggered under Liberty’s policy if and when we receive  
24 something in writing from the All Risk underwriter and/or carrier  
25 disclaiming coverage for this loss.

26           22. Defendant Liberty Mutual has breached the implied covenant of good  
27 faith and fair dealing by unreasonably failing and/or refusing to properly interpret  
28 its own policy and, in turn, failing and/or refusing to pay the policy benefit.

1           23. Pursuant to the CMA, Brookfield was to be named as an additional  
2 insured under the Liberty Mutual policy.

3           24. Ms. Doherty's March 1, 2021, coverage position letter denying  
4 coverage to Brookfield identifies the existence of a policy issued by Liberty Mutual,  
5 a copy of which Plaintiffs have requested but have not been provided.

6           25. Ms. Doherty's coverage position letter identifies that coverage is  
7 available to Brookfield under the Liberty Mutual policy and, in fact, does provide  
8 coverage with respect to some or all of Brookfield's claimed losses in connection  
9 with the underlying loss, requiring that Liberty Mutual indemnify Brookfield  
10 pursuant to the terms of the Liberty Mutual policy.

11           26. Liberty Mutual has and continues to fail and/or refuse to acknowledge  
12 and recognize that the claimed losses were in fact covered under the Liberty Mutual  
13 policy, which is primary pursuant to the terms of the CMA and has unequivocally  
14 refused to indemnify Brookfield for its losses, as required under the terms of the  
15 Liberty Mutual policy, under which Brookfield is an insured.

16           27. Brookfield performed in accordance with the terms and conditions  
17 standard of a policy for insurance, except to the extent that Brookfield was  
18 prevented from doing so by Liberty Mutual or is otherwise excused from  
19 performance.

20           28. By reason of the failure and/or refusal of Liberty Mutual to provide  
21 coverage to Brookfield for its losses in connection with the underlying loss, despite  
22 its express obligation to do so under the terms of the Policy and applicable law,  
23 Liberty Mutual has breached the written contract of insurance under which  
24 Brookfield is entitled to coverage as an additional insured.

25           29. By reason of the failure and/or refusal of Liberty Mutual to indemnify  
26 Brookfield and Starr for their respective losses in connection with the underlying  
27 loss, despite its express obligation to do so under the terms of the Liberty Mutual  
28

1 policy and applicable law, Liberty Mutual has breached the written contract of  
2 insurance under which Brookfield and Starr are entitled to indemnification.

3 30. As a direct and proximate result of Liberty Mutual's breaches,  
4 Brookfield and Starr have been forced to incur fees, costs, and expenses in an  
5 amount to be determined at trial.

6 31. As a direct and proximate result of Liberty Mutual's breached,  
7 Brookfield and Starr incurred and will continue to incur attorney fees and costs,  
8 expert fees and costs, and other costs and expenses in excess of \$800,000.

9 **SECOND CAUSE OF ACTION**

10 **(For Express Indemnification by Brookfield and Starr Against Liberty**  
11 **Mutual)**

12 32. Plaintiffs repeat, replead, and reallege each and every allegation set  
13 forth in paragraphs 1 through 31, inclusive, of this Complaint, as though fully set  
14 forth herein.

15 33. An actual controversy has arisen and now exists between Plaintiffs and  
16 Defendant concerning their respective rights and liabilities with respect to this  
17 matter.

18 34. Brookfield and Starr contend that the Policy issued by Liberty Mutual,  
19 under which Brookfield is an additional insured, is the primary policy for a loss  
20 such as is the subject of this litigation, for which the total damages amount to  
21 \$869,392.20.

22 35. Brookfield and Starr contend that it has received from Starr payment in  
23 the amount of \$619,392.20, net of Brookfield's \$250,000 deductible.

24 36. Brookfield and Starr assert that Liberty Mutual was required to  
25 indemnify Brookfield and Starr for damages sustained in connection with the  
26 underlying loss in their entirety.

27 37. By reason of the failure and/or refusal of Liberty Mutual to indemnify  
28 Brookfield and Starr for their respective losses in connection with the underlying

1 loss, despite its express obligation to do so under the terms of the Liberty Mutual  
2 policy and applicable law, Brookfield and Starr are entitled to indemnification.

3 38. As a direct and proximate result of Liberty Mutual's failure to  
4 indemnify Plaintiffs, Brookfield and Starr have been forced to incur fees, costs, and  
5 expenses in an amount to be determined at trial.

6 39. As a direct and proximate result of Liberty Mutual's failure to  
7 indemnify, Brookfield and Starr incurred and will continue to incur attorney fees  
8 and costs, expert fees and costs, and other costs and expenses in excess of  
9 \$800,000.

### 10 **THIRD CAUSE OF ACTION**

#### 11 **(For Equitable Contribution by Starr Against Liberty Mutual)**

12 40. Plaintiffs repeat, replead, and reallege each and every allegation set  
13 forth in paragraphs 1 through 39, inclusive, of this Complaint, as though fully set  
14 forth herein.

15 41. On or about December 28, 2020, the Property sustained damages in the  
16 total amount of \$869,392.20.

17 42. To date, Starr has paid \$619,392.20 to Brookfield under its insurance  
18 policy as a result of the damage sustained to the Property.

19 43. To date, Liberty Mutual has paid nothing in connection with the  
20 underlying loss.

21 44. As it is reflected unambiguously in the CMA, the Liberty Mutual  
22 policy was intended by the parties to be the primary policy for a loss such as is the  
23 subject of this litigation.

24 45. Accordingly, Liberty Mutual is required to reimburse Starr in the  
25 amount of \$619,392.20.

26 ///

27 ///

28 ///

**FOURTH CAUSE OF ACTION**

**(For Declaratory Relief by Brookfield and Starr Against Liberty Mutual)**

46. Plaintiffs hereby reallege and incorporate by reference all preceding allegations in Paragraphs 1 through 45 of the Complaint as though fully set forth herein.

47. An actual controversy now exists between Plaintiffs Starr and Brookfield against Liberty Mutual concerning each parties' rights and/or obligations, as it is reflected unambiguously in the CMA, that the Liberty Mutual policy was intended by the parties to be the primary policy for a loss such as is the subject of this litigation.

48. Liberty Mutual contends that its policy of insurance is triggered only in the event that Liberty Mutual receives "something in writing from the All Risk underwriter and/or carrier disclaiming coverage for this loss" which would thereby render Liberty Mutual's policy of insurance excess to the Starr policy issued to Brookfield, in contradiction to the CMA, for damage caused to the Property by Liberty Mutual's insured.

49. A judicial declaration is necessary and appropriate at this time in order that Starr and Brookfield may ascertain their respective rights, and Liberty Mutual's rights and duties with respect to Liberty Mutual's contractual obligations to both Turner and Brookfield, as an additional insured under the Liberty Mutual policy.

**PRAYER**

WHEREFORE, Plaintiffs pray for judgment against the Defendant, and each of them, as follows:

1. For compensatory damages in an amount to be proven at trial;
2. For pre-judgment interest pursuant to *Civil Code* Section 3287-3288;
3. For post-judgment interest;

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///

1           4.     For such other and further relief as the court may deem just and fair.

2     DATED: January 6, 2023

**FORAN GLENNON PALANDECH  
PONZI & RUDLOFF PC**

4           By: /s/ James B. Glennon  
              James B. Glennon  
              S. Alex Webb

6                     Attorneys for Plaintiffs BROOKFIELD  
7                     PROPERTY GROUP, LLC – US and  
8                     STARR SPECIALTY LINES  
9                     INSURANCE AGENCY LLC (ACTING  
10                    ON BEHALF OF LLOYD’S  
11                    SYNDICATE CVS 1919)